

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.217 of 2019**

- Prachi Steel Raipur Road Tifra Near The Bridge, Through Suresh Chandra Gupta, S/o Shri Munshilal Gupta, Aged About 63 Years, Under The Police Station Civil Line Bilaspur, R/o Vinoba Nagar Bilaspur, Tahsil And District Bilaspur Chhattisgarh.

---- **Petitioner****Versus**

- Vijay Soni S/o Narayan Soni Proprietors Of Priya Traders, Telipara Bilaspur, Police Station City Kotwali, Tahsil And District Bilaspur Chhattisgarh.

---- **Respondent**

 For the Petitioner : Ms. Varsha Sharma, Advocate
 For the respondent : None

Hon'ble Shri Justice Ram Prasanna Sharma
Order On Board

25.01.2019.

1. Heard on IA No.01/19 for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and the delay of 22 days in filing the petition is hereby condoned.
3. Also heard on application for special leave to appeal under Section 378(4) of the CrPC.
4. This petition has been preferred against Order dated 29.9.2018 passed by Judicial Magistrate First Class, Bilaspur (CG) in Criminal Complaint Case No.1050/2014 wherein the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 has been dismissed for want of prosecution.

5. It appears from the order sheet that on the last date of hearing the case was dismissed for single default.

6. In the matter of **Associated Cement Co. Ltd. Vs. Keshvanand** reported in **(1998) 1 SCC 687**, Hon'ble the Apex Court held as under:-

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

Again, in the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, Hon'ble the Apex Court held that in a proceeding under Section 138 of the Negotiable Instruments Act, 1881, the single default in appearance on the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.

7. Dismissal of the complaint case was not the only option before the trial Court. It should have been adjourned for some other date as per the provisions of Section 256(1) CrMP.

8. In view of this Court, the case should have been decided on merits and it should not have sent to record room without deciding issues between the parties and without providing opportunity to adduce evidence. But that is not done in the present case, therefore, the order passed by the trial Court is not sustainable.

9. Accordingly, order passed by the trial Court is set aside allowing the petition. The trial Court is directed to proceed with the case on merits after providing opportunity of hearing to both the sides and decide the case on merits after concluding it on merits.

10. The petitioner to appear before the trial Court on **14.03.2019** for further proceedings.

**Sd/-
(Ram Prasanna Sharma)
JUDGE**